

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellant

**Lower Court No. 04-FT-0024**

-vs-

**Circuit Court No. 04-02637**

**MACARIO G. YAMAT, JR**

Defendant-Appellant.

**COA NO. 257923**

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**KENT COUNTY PROSECUTOR**

Attorney for Plaintiff-Appellant

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**JOLENE J. WEINER-VATTER**

Attorney for Defendant-Appellee

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**DEFENDANT/APPELLEE'S BRIEF IN RESPONSE TO PLAINTIFF/APPELLANT'S  
BRIEF ON APPEAL**

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**STATEMENT OF JURISDICTION**

The Defendant/Appellee does not contest Plaintiff/Appellant's jurisdictional statement.

**COUNTER-STATEMENT OF QUESTION PRESENTED**

- I. DID DEFENDANT OPERATE THE MOTOR VEHICLE AND EXERCISE PHYSICAL CONTROL OVER THE MOTOR VEHICLE FOR PURPOSES OF THE FELONIOUS DRIVING STATUTE WHEN DEFENDANT UNEXPECTEDLY GRABBED THE STEERING WHEEL OF THE VEHICLE WITHOUT THE DRIVERS CONSENT OR KNOWLEDGE WHILE SITTING IN THE PASSENGER SEAT? ..... 2**

Plaintiff/Appellant answers: Yes

Circuit Court answers: No

Defendant/Appellee answers: No

## **STATEMENT OF FACTS**

Defendant/Appellee accepts Plaintiff/Appellant's Statement of Facts. Macario G. Yamat Jr. was charged in the 61<sup>st</sup> District Court with one count of Felonious Driving, MCL 257.626c and one count of Operating - License Suspended, Revoked, Denied - Causing Serious Injury, MCL 257.904(5) from an incident that occurred on January 4, 2004 in the City of Grand Rapids, County of Kent, State of Michigan.

On February 23, 2004 District Court Judge Jeanine LaVille held that as a matter of law Defendant Yamat was not "operating" the vehicle for purposes of the Felonious Driving Statute. All charges were subsequently dismiss.

The Plaintiff/Appellant appealed the District Court ruling to the 17<sup>th</sup> Circuit Court. On August 27, 2004 the Honorable Dennis B. Leiber heard oral arguments on the appeal and issued an opinion affirming the District Court ruling.

The Plaintiff/Appellant thereafter appealed to the Michigan Court of Appeals. The Michigan Court of Appeals upheld the lower courts rulings in published opinion *People v Yamat*, \_\_\_\_\_ Mich App \_\_\_\_\_ (Docket No. 257923).

Plaintiff/Appellant now seeks leave to appeal, or in the alternative peremptory reversal.

## ARGUMENT

**I. DEFENDANT DID NOT OPERATE THE MOTOR VEHICLE NOR EXERCISE PHYSICAL CONTROL OVER THE MOTOR VEHICLE FOR PURPOSES OF THE FELONIOUS DRIVING STATUTE WHEN DEFENDANT UNEXPECTEDLY GRABBED THE STEERING WHEEL OF THE VEHICLE WITHOUT THE DRIVERS CONSENT OR KNOWLEDGE WHILE SITTING IN THE PASSENGER SEAT**

Felonious driving, MCL 257.626c, was originally drafted in 1931, P.A. No. 214, and was amended by P.A. 2001, No. 134, Eff. Feb. 1, 2002. This law, which prohibited the reckless operation of a motor vehicle, predated the Motor Vehicle Code. After the enactment of the Motor Vehicle Code, the statute was considered, as written, a “small stand alone act.”

As amended P.A. 2001, No. 134, MCL 257.626c reads:

A person who operates a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

The amendment of P.A. 214 of 1931 by P.A. 134 of 2001 offered several changes. First, the statute of Felonious Driving was moved to the Motor Vehicle Code. The moving of the Felonious Driving Statute to the Motor Vehicle Code was done to concentrate all laws that pertain to the same subject under one simple code. It should be noted that the Michigan Legislature and Michigan Court's consider careless driving and reckless driving to be lesser offenses of the Felonious Driving. People v Lavack, unpublished opinion, 2002 WL 1040785 (Mich App).

Second, the statute's language was change to parallel language used in many other statutes involving the operation of the motor vehicle. Particularly, the statute was expanded to include acts committed "open to the general public or generally accessible to motor vehicles, including parking lots." Also, the language previously referring to "crippling injury" was changed to "a serious impairment of a bodily function."

Third, the Insurance Code was amended so that a person convicted of Felonious Driving would be ineligible for auto insurance for a period of time. Also to be noted, further changes were made to the Insurance Code to correlate reference to the Felonious Driving Statute.

The issue as identified by Plaintiff/Appellant is whether or not Defendant/Appellee was operating a vehicle for purposes of the Felonious Driving Statute, when Defendant/Appellee reached over from the passenger seat and grabbed the wheel of the vehicle without the consent or permission of Ms. Henrietta Danelson, the person in the driver's seat, causing the vehicle to leave the road and strike a jogger on the sidewalk.

The Felonious Driving Statute states, "A person who operates a vehicle . . . is guilty of felonious driving" MCL 257.625c. And Plaintiff/Appellant is correct in stating that Michigan

Complied Law 257.36 defines operator as, “every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.” Important to realize is that the Michigan Legislature did not include language to the effect that “any person who interferes” with the operation of a motor vehicle be included in the definition of Felonious Driving.

The Plaintiff/Appellant first argues that the term “operates” is defined by the term “control” and the term “control” is not defined by statute and therefore this court should rely on a dictionary definition for purposes of interpreting the Felonious Driving Statute. However, to argue that the term “operates” is not defined by the Michigan Court’s and must therefore be defined by Webster’s is to simply ignore dozens of Michigan cases, civil and criminal, who have consistently determined what the word “operates” means.

In response the Plaintiff argues that the term “operates” or “control” is not defined for purposes of a criminal statute. However, Plaintiff/Appellant argument is flawed in that Plaintiff/Appellant is arguing that the Michigan Court of Appeal’s and the Michigan Supreme Court issue opinions that state, “ if a word is not otherwise defined under Michigan Law, ordinary meaning under *CRIMINAL LAW* or *CIVIL LAW* applies.” Plaintiff/Appellant attempts to distinguish a words meaning based on whether or not it is a criminal or civil application.

Plaintiff/Appellant further argues that the term “operates” for purposes of the Felonious Driving Statute should solely adopt the definition of “operates” as applied to the OUIL cases. Applied as such, the Michigan Appeals Court and Michigan Supreme Court have defined the term “operate” for purposes of the OUIL statute as follows.

In 1984 the Michigan Supreme Court in People v Pomeroy v Fulcher, 419 Mich 441 (1984) held that an individual asleep behind the wheel of a vehicle could not be defined as

having “operated” the vehicle. In Pomeroy the defendant was in the *driver’s seat* behind the wheel of a motionless vehicle, motor running, asleep. In Fulcher the defendant was also in the driver’s seat behind the wheel of a motionless vehicle, motor running, foot not on the accelerator, asleep; however, the vehicle was in a ditch with its front end up on the road and the vehicle’s transmission was in drive. The court ruled that because the defendant’s were asleep there was no operation. The court reasoned, had the defendant’s been awake or had the vehicle been in motion the defendant’s would have been operating the vehicle for purposes of the OUIL statute.

The court soon began to reconsider its position in People v Smith, 164 Mich App 767 (1988). In Smith the defendant was in the *driver’s seat*, engine on, transmission in park and defendant passed out; however, the vehicle was on the highway. The court held that defendant was operating the vehicle because the question becomes are there sufficient facts, direct or circumstantial, that defendant had operated his vehicle while intoxicated before the vehicle was stopped.

The Court further expanded the definition of “operate” in People v Woods, 450 Mich 399 (1995). In Woods defendant was unconscious in the *driver’s seat* at a drive-through restaurant, engine running, transmission in drive and foot resting on the brake. The Michigan Supreme Court overruled Pomeroy to the extent that a sleeping person in a motionless car could be operating the vehicle for purposes of the OUIL statute.

The Plaintiff/Appellant argues that Woods definition of “operates” should control because the court identified the purpose of the expanded definition of “operate” to include the preventing of a “collision of a vehicle with other persons or property”. A purpose similar to the Felonious Driving Statute. However, Plaintiff/Appellant fails to acknowledge the further stated

purpose of the OUIL statute. The expanded definition of the word “operates” as stated in Woods is to prevent an intoxicated person from having the opportunity to get behind the wheel of a vehicle, regardless of risk. Id at 406. A purpose not similar or necessary to the Felonious Driving Statute.

The Michigan Court of Appeals again addressed the definition of “operate” in People v Sides, unpublished opinion 1998 WL 1992970 (Mich App). In Sides defendant was intoxicated, his transmission was in park, the vehicle was not in motion and the vehicle was off to the side of the road; however, defendant was in the driver’s seat and some of the vehicle was sticking out onto the road.

The Court again relied on the facts: defendant in the driver’s seat, vehicle sticking out on the road and defendant intoxicated in conjuncture with the purpose of the OUIL statute as held in Woods. The court did the same in People v Charles, unpublished opinion 2004 WL 1108794 (Mich App) when it relied on similar facts.

Important to all these cases is the fact that the defendant was intoxicated behind the wheel of the vehicle. To support this position defendant cites People v Motton, unpublished opinion 2003 WL 22928919 (Mich App). In Motton defendant was parked in the driveway of a State Police Post *behind the wheel of the vehicle* with the engine turned off. The officer requested defendant’s drivers license at which point defendant got out of her vehicle and went inside the Post. The officer attempted to arrest defendant inside the Post and defendant resisted.

Defendant Motton argued that she was not the “operator” of the vehicle as defined by MCL 257.36 “Operator”. However, defendant was charged with Operating without a license, Operating with expired plate, and Resisting and Opposing a Police Officer. The Court

distinguished the difference between Operator and Operating. The statute of Operating without a license requires that “a person operating” a vehicle display his/her license on demand and does not require an operator to do so. The court defined “operating” as the person actually driving the vehicle. The court reasoned that defendant was “*behind the wheel*” of her vehicle of which she parked at the Post. Id at 2.

Plaintiff/Appellant next argues that the cases presented by Defendant/Appellee “do not rely on the interpretation of the Motor Vehicle Code.” However, it appears that Plaintiff/Appellant fails to understand that the Michigan Motor Vehicle Code and the Michigan Insurance Code are intertwined such that when the amendments were made to the Felonious Driving Statute changes likewise had to be made to the Michigan Insurance Code.

As already mentioned, the Felonious Driving Statute was amended to comport with other statutes as well as the Michigan Motor Vehicle Code and Michigan Insurance Code.

Plaintiff/Appellant further argues that this court should ignore and not consider civil case determination of the definition of “operate” as those cases “were not bound by the statutory definitions” as set for in Michigan Compiled Law 257.36 “Operator” defined.

Plaintiff/Appellant’s logic is flawed, as the Michigan Court of Appeal’s and the Michigan Supreme Court have never given the same word two separate definitions basely solely on whether the word was used in the civil or criminal context when the word is describing an ordinary object, item, or act. As the word “vehicle” itself is no more given separate definitions for purposes of the Michigan Insurance Code and the Michigan Motor Vehicle code, neither is the term operate.

Particularly, Plaintiff/Appellant argues that the lower court’s holding was in error because

it relied on and did not consider that civil cases are held to a separate standard than criminal.

Plaintiff/Appellant argues, the lower court “injected a civil law standard into the construction of the statutory definitions of operation of a motor vehicle.” Plaintiff/Appellant is arguing therefore that words never cross over from criminal to civil or civil to criminal and that the lower court was unable to understand that civil cases are held to a different standard than criminal. However such an argument is also flawed.

In People v Chatterton, 102 Mich App 248 (1980) defendant was charged with felonious driving after defendant’s vehicle slide across the center lane on a slippery highway hitting an oncoming vehicle. The issue was whether or not the act of driving a vehicle on a slippery road and hitting an oncoming vehicle was sufficient evidence of negligence for purposes of meeting the requirement of “crippling injury”.

The Michigan Court of Appeals in Chatterton held that for defendant to be guilty of felonious driving there had to be something more than *ordinary negligence* resulting in the crippling injury. The statute of Felonious Driving, not unlike other statutes, embraces all sections and areas of our law. To simply state that because a word is used in a criminal context it cannot be used similarly or referenced in a civil context is absurd. The court did not redefine the term ordinary negligence, it simply stated that the statute of felonious driving required more than ordinary negligence.

The Michigan Court’s have defined “operating” in such civil cases as Flager v Associated Truck Lines, Inc., 52 Mich App 280 (1974); Farm Bureau General Insurance Company of Michigan v Riddering, 172 Mich App 696 (1988); Westfield Insurance Company v Mitchell, unpublished opinion, 2000 WL 33418934 (Mich App); and Westfield Insurance Company v

McClusky, unpublished opinion, 2003 WL 22113950 (Mich App).

In Flager v Associated Truck Lines, Inc., 52 Mich App 280 (1974) two girls borrowed a motor scooter built and made for one person. Because the motor scooter was designed for one person and not two when one of the girls stood to work the throttle she could not also work the brake. The second girl sitting on the same motor scooter therefore worked the brake. The girls agreed and consented to jointly operate the motor scooter. The Michigan Court of Appeals reasoned that “the right of control of the driver of a car by a passenger may be established upon the facts in a particular case; [however], it may not be presumed.” Id at 284. The court continued to restate the fact that both girls had agreed to have some measure of physical control over the operation of the motor scooter. Id at 283. Also of importance is that both girls were in essence sitting in the driver seat of the motor scooter.

In Farm Bureau General Insurance Company of Michigan v Riddering, 172 Mich App 696 (1988) the court clearly distinguished the difference between consenting parties and non-consenting parties or actions. In Riddering the passenger, not unlike the present case, reached over unexpectedly and grabbed the steering wheel being controlled by the driver of the vehicle. The passenger was sitting in a passenger seat: the passenger was not sitting in the driver’s seat.

The Michigan Appeal’s Court held that a passenger grabbing a steering wheel and turning it while the vehicle was moving, without the driver’s consent or permission, was not “operation” of a motor vehicle. The court held the some control does not equal operating. Id at 701. In fact, the Court stated:

We have been unable to find any reported Michigan cases which address the issue of whether the grabbing of a steering wheel by a passenger constitutes the “operation” of a

motor vehicle. Id. at 701.

The Court went on to say that the operation of a vehicle includes more than simple control.

“Steering is only part of operating a vehicle. Operation necessarily includes the additional functions of controlling the gas and brake pedals and all the components necessary to make a vehicle run.” Id. at 703.

In its holdings and reasoning the Court did not state that the definition it gave was only for purposes of civil law. In fact the court similarly distinguished the facts of the case, not unlike the OUIL cases: the *passenger was not sitting in the drivers seat*, had no foot on, or access to, the brake or accelerator, and the controls were being physically controlled by the driver.

Finally, the Court again addressed the definition of operating in Westfield Insurance Company v Mitchell, unpublished opinion, 2000 WL 33418934 (Mich App) and Westfield Insurance Company v McClusky, unpublished opinion, 2003 WL 22113950 (Mich App). Like Flager, in these cases the driver and passenger entered into an agreement to “joint drive” the vehicle.

The Court held that use of a vehicle does not mean the same thing as operating a vehicle. The Court concluded that Riddering is controlling in that operation includes more than simple control or use. Furthermore, not unlike the case at hand, only one person was needed for the truck to be operative.

In the present case defendant was in the passenger seat, unexpectedly grabbed the steering wheel without the driver’s consent or permission. The driver of the vehicle maintained control over the brake, accelerator, transmission, horn and other components. The purpose of the felonious driving statute, although similar to the OUIL statute in that it is meant to prevent

collisions between a vehicle and a person or property, is unlike the OUIL statute in that it does not have the dual purpose of preventing any intoxicated person from getting behind the wheel of a vehicle.

Should Plaintiff/Appellant's argument stand, any interference or distraction with the operation of a motor vehicle by anyone or thing would be held to be Felonious Driving: a child crying, a air freshener hanging on a rear view mirror, a passenger telling jokes and making a driver laugh, or a cell phone.

**RELIEF**

For all the above, defendant respectfully request that the Circuit Court's decision be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jolene J. Weiner-Vatter', written over a horizontal line.

Jolene J. Weiner-Vatter  
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A handwritten date '6/2/08' in black ink, written over a horizontal line.

Date